

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 8879 of 1999(F)

PETITIONER:

**S.VENUGOPALAN ACHARI,
ASSISTANT EXECUTIVE ENGINEER (RETIRED),
FLAT NO.FF2A, 2411, BILATHIKULAM HOUSING COLONY,
CALICUT – 6.**

**BY ADV. SRI.K.P.DANDAPANI
SRI.O.RAMACHANDRAN NAMBIAR**

RESPONDENTS:

- 1. KERALA STATE HOUSING BOARD,
SANTHI NAGAR, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.**
- 2. THE CHAIRMAN,
KERALA STATE HOUSING BOARD,
THIRUVANANTHAPURAM.**

**BY SRI. POOVAPPALLY M.RAMACHANDRAN NAIR,ADL.SC
BY GOVERNMENT PLEADER**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P.NO.14766, 337011999 AND 1765/2002 IN O.P.NO.8879/1999 F

DISMISSED

22/06/2007

**SD/-THOTTATHIL B.RADHAKRISHNAN,
J U D G E.**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF ORDER NO.VIG/4673/86 DTD. 15/10/86 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER AND ANOTHER.**
- EXT.P2: COPY OF ORDER NO.VIG/4673/86 DTD. 16/06/87 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.**
- EXT.P3: COPY OF MEMO OF CHARGES VIDE NO.VIG.4673/86 DTD. NIL ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**
- EXT.P3(A): COPY OF STATEMENT OF ALLEGATIONS FURNISHED WITH EXHIBIT P3 TO THE PETITIONER BY THE 1ST RESPONDENT.**
- EXT.P4: COPY OF REPLY SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ON 9/10/87.**
- EXT.P5: COPY OF ORDER NO.AD3.1830/88/HB/VIG. DTD. 26/06/90 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER AND OTHERS.**
- EXT.P6: COPY OF ORDER NO.AD3(A) 1838/88/VIG.DTD. 26/02/91 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.**
- EXT.P7: COPY OF SHOW-CAUSE NOTICE NO.ADIII (A) 4673/86/VIG. DTD. 28/06/97 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**
- EXT.P8: COPY OF ORDER NO.HBO 1011/AD3(A)95/VIG. DTD. 21/07/95 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.**
- EXT.P9: COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 8/08/97.**

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- EXT.P10: COPY OF ORDER NO.535/98/VIG. DTD. 28/05/98 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER (UO (F)ADIII (A)/ 4673/86/VIG.).
- EXT.P11: COPY OF APPEAL MEMO SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 21/06/98.
- EXT.P12: COPY OF ORDER NO.HBO.NO.924/98/VIG. (UO (F) NO.AD3(A)/ 6353/98/VIG.) DTD. 14/09/98 OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER.
- EXT.P13: COPY OF COMMUNICATION NO.AD.II(A) 909/95 DTD. 29/08/97 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.
- EXT.P14: COPY OF THE ORDER ON.HBO NO.601/ADII (A) 1009/95 DTD. 5/07/99 ISSUED BY THE 1ST RESPONDENT.
- EXT.P15: COPY OF THE INVITATION CARD OF THE PETITIONER'S DAUGHTER'S MARRIAGE.
- EXT.P16: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT, DTD. 28/07/99.
- EXT.P17: COPY OF THE COVERING LETTER FROM THE PETITIONER TO THE 1ST RESPONDENT DTD. 21/11/2001.
- EXT.P18: COPY OF THE ORDER NO.AD-II(A) 1909/95 DTD. 26/12/2001 OF THE 1ST RESPONDENT.

/TRUE COPY/

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Thottathil B. Radhakrishnan, J.

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O.P.No.8879 of 1999

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Dated this the 22nd day of June, 2007.

JUDGMENT

Petitioner and another were placed under suspension. Disciplinary proceedings were initiated leading to a report dated 17-12-1990 by Sri.K.V.Krishnan. Unfortunately, that report is not on record in this case. But, reference to that report is not necessary for the disposal of this case because the impugned appellate order as well as the decision of the Secretary of the Housing Board does not refer to that report.

2. On 8-6-1987, the petitioner was issued a show cause notice with memo of charges, thereby initiating action under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, which apply to the staff of the Housing Board. I presume, on the basis of some of the contents of the exhibits, that Sri.K.V.Krishnan had made his report on 17-12-1990 on that enquiry. It is also the case of the petitioner

that he had never been served with the copy of that report.

2. After the petitioner retired on 31-12-1995, he was issued a show cause notice on 28-6-1997 (Ext.P7) signed by the Secretary of the Housing Board, calling upon the petitioner to show cause against the proposed recovery of Rs.1,79,796/- with interest towards alleged loss sustained by the Board. Though it is stated in the third paragraph of that notice that "the undersigned has carefully gone through the inquiry reports, the evidence collected, findings therein", the contents of that enquiry report of Sri.K.V.Krishnan does not find appropriately reflected in Ext.P7. Petitioner filed Ext.P9 objections. Ext.P10 was thereafter issued by the Secretary, enumerating the report of Sri.K.V.Krishnan at Sl.No.8 in that order. However, without making any reference to any of the findings in that enquiry report. Petitioner filed Ext.P11 appeal to the Chairman. In Ext.P12 appellate order, the report of Sri.K.V.Krishnan is at Sl.No.8.

However, no reference is made to that report, while the discussions in Ext.P12 ultimately led to the dismissal of the appeal of the petitioner.

3. Rule 3 in Part III K.S.R. is the relevant Rule that applies. Continuation of the disciplinary proceedings initiated during the term of office of a delinquent has to be carried to its logical end and on the basis of such disciplinary proceedings or any judicial proceedings, the delinquent can be visited with recovery from pension as enjoined by that Rule. I refer to Rule 3 in Part III KSR for the limited purpose of noticing that what has to primarily govern is the result of the disciplinary enquiry. This means, the report of Sri.K.V.Krishnan, including the findings therein, the evidence which was dealt with by him, the reasons for his findings etc. are the materials that should attain the attention of the disciplinary and the appellate authority to conclude whether the proceedings under Rule 3 of Part III KSR is to be taken, overruling the objections in that regard. While it is the case of

the petitioner that he was not supplied with copy of the enquiry of Sri.K.V.Krishnan, as already noticed by me, that enquiry report has not been adverted to and considered, either by the disciplinary authority or the appellate authority, as is expected from an administrative authority dealing with the disciplinary proceedings in the realm of service laws.

4. In the aforesaid circumstances, I find no way to sustain the impugned Exts.P10 and P12 and the same are accordingly quashed, leaving the respondents with liberty to proceed from the stage of consideration of the enquiry report of Sri.K.V.Krishnan by the disciplinary authority. A final decision shall be taken, following this judgment, by the Secretary of the Board, after giving the petitioner an opportunity of being heard. Let that be done within a period of two months from the date of receipt of a copy of this judgment. Needless to say that, this judgment does not interfere with the right of the petitioner for any further appeal against such decision, if it were

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against the interest of the petitioner. The release of pension will however be subject to the action that may follow this judgment.

Writ petition is disposed of in the above terms.

Thottathil B.Radhakrishnan,
Judge.

sl.

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Thottathil B. Radhakrishnan, J.

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O.P.No.8879 of 1999

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JUDGMENT

Dated:22-6-2007